



Department of Energy
Carlsbad Field Office
P. O. Box 3090
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APR 23 2004



Ms. Sandra Martin
Bureau Chief
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Dr. East Bldg-1
Santa Fe, NM 87502

Subject: Additional Information on the Potential Notice of Violation from the January 22-23, 2004 Inspection

Dear Ms. Martin:

On January 22 and 23, 2004, a team of six inspectors from the New Mexico Environment Department (NMED), Hazardous Waste Bureau, conducted an unannounced inspection at the Waste Isolation Pilot Plant (WIPP). During the inspection, the NMED representatives observed a container in the underground used to collect drainage from the Exhaust Shaft water rings. This container was labeled hazardous waste and had a water collection hose that routed the water drainage into the container. At the inspection close-out meeting, NMED representatives were split in their opinions on whether this container met the intent of 40 CFR 265.173(a) which states that a container holding waste be closed when waste is not being added or removed. On February 12, 2004, we submitted a letter to inform the Hazardous Waste Bureau that an analysis of a sample from the container showed that the container did not contain a hazardous waste. In addition, the letter described changes that were implemented at NMED's suggestion regarding clamping the hose to a fitting in the container bung hole to eliminate the small gap between the hose and the edge of the bung hole.

It is our contention that this container was in compliance with 20.4.1.600 NMAC [incorporating 40 CFR § 265.173(a)] at the time of the inspection because it was actively being filled with water drainage.

Title 40 CFR § 265.173(a) states "A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste." The container at issue captures drainage from the Exhaust Shaft water ring system, which is configured to collect the water from behind the shaft liner. This water drains continuously from the shaft water rings. Even if this water were to be sampled and found to contain hazardous constituents above regulatory levels, it would be in compliance with this regulation because water is continuously being added to the container (i.e., the container was open in order to "add waste").



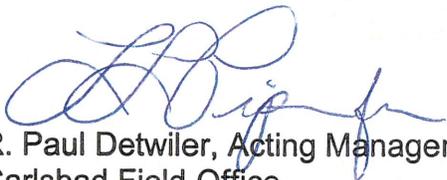
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The intent of this regulation was explained in the preamble to the May 19, 1980 Hazardous Waste and Consolidated Permit Regulations (45 Fed. Reg. No. 98 pp33063-33285). The intent of a closed-container is "*to minimize emissions of volatile wastes, help protect ignitable or reactive wastes from sources of ignition or reaction, to help prevent spills, and to reduce the potential for mixing of incompatible wastes and direct contact of facility personnel with waste.*" The water being collected in the container is naturally occurring brine and is not volatile, ignitable or reactive. Therefore emissions of volatile wastes and sources of ignition or reaction are not concerns for this waste stream. The collected water is prevented from spilling due to the location and management of the drum. In addition, the drum is managed on a secondary containment spill pallet and is secured to prevent the drum from tipping or otherwise spilling its contents. The drum is located next to the Waste Shaft Hoist in an area with limited access preventing direct contact of facility personnel. This location is not accessible to vehicle traffic by the general employee.

Samples of the waste in the drum during the NMED's January 22 and 23, 2004, inspection were collected on Wednesday, January 28, 2004. An independent environmental laboratory analyzed the samples. The samples were analyzed for Toxicity Characteristic Leaching Procedure (TCLP) metals. Analytical results show that the water is non-hazardous for the eight RCRA metals. In addition the samples were also analyzed for TCLP volatile organic compounds and TCLP semi-volatile organic compounds. All results confirm the waste is non-hazardous. As such the drum has been relabeled as non-hazardous waste and is not subject to regulation as a hazardous waste by 40 CFR 262.

If you have questions regarding our position or would like to conduct further discussions, please contact Mr. Jody Plum at 234-7462.

Sincerely,



R. Paul Detwiler, Acting Manager
Carlsbad Field Office



S. D. Warren, General Manager
Washington TRU Solutions